

Revised 03/06 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORKFORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

20-CV-0896 EAW

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. Oliver Case

2.

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. Joseph Noeth

4. Dr. S. Abbasey

2. Dr. A. Schunk

5. Medical Director Dr. Rao

3. Dr. S. Michalek

6. Nurse Presley

See Attachment Sheet for more defendants

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Oliver Case # 11A5076

Present Place of Confinement & Address: Southport Correctional Facility

P.O. Box 2000 Pine City, NY 14871-2000

Name and Prisoner Number of Plaintiff:

Present Place of Confinement & Address:

Defendant's Information

Name of Defendant: S. Abbasey

If applicable) Official Position of Defendant: Doctor at Attica Corr. Fac.

If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: Attica Correctional Facility 639 Exchange Street Attica 14011-0149

Name of Defendant: Dr. Rao

If applicable) Official Position of Defendant: Medical Director

If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: Attica Correctional Facility 639 Exchange St. Attica 14011-0149

Name of Defendant: Doctor / NP Salotti

If applicable) Official Position of Defendant: Doctor / NP

If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: Five Points Correctional Facility, Caller box 100, 6600 State Rt. 96, Romulus 14541

Name of Defendant: John Colvin

If applicable) Official Position of Defendant: Superintendent

If applicable) Official Position of Defendant:

If applicable) Defendant is Sued in ☐ Individual and/or ☒ Official Capacity

Address of Defendant: Five Points Correctional Facility, Caller box 100, 6600 State Rt. 96, Romulus 14541

Defendant's Information

Name of Defendant: Shelley Mallozzi

(If applicable) Official Position of Defendant: Director of Inmate grievance program

(If applicable) Defendant is Sued in Individual and
or ✓ Official Capacity.

Address of Defendant: 1220 Washington Ave. Bldg. 9, Albany
Ny, 12226

Name of Defendant: Paul Piccolo

(If applicable) Official Position of Defendant: Superintendent of Southport

(If applicable) Defendant is Sued in Individual and/or ✓
Official Capacity

Address of Defendant: 236 Bob Masia Dr. P.O. Box 2000,
Pine City, Ny 14871-2000

Name of Defendant: Hanna Martin

(If applicable) Official Position of Defendant: Grievance Supervisor

(If applicable) Defendant is Sued in Individual and/or ✓
Official Capacity

Address of Defendant: 236 Bob Masia Dr. P.O. Box 2000
Pine City, Ny 14871-2000

Defendant's Information

Name of Defendant: Carl J. Koenigsmann, M.D.

(If applicable) Official Position of Defendant: Deputy Commissioner
Chief Medical Officer

(If applicable) Defendant is sued in ☒ Individual and ☒ or ☐ Official Capacity.

Address of Defendant: 1220 Washington Ave. Bldg. 9, Albany, NY
12226

Name of Defendant: Richard McDevitt

(If applicable) Official Position of Defendant: Regional Health Services
Administrator

(If applicable) Defendant is sued in ☐ Individual and ☒ or ☒ Official Capacity.

Address of Defendant: 1220 Washington Ave. Bldg. 9,
Albany, NY 12226

Name of Defendant: Vern Baldwin

(If applicable) Official Position of Defendant: Regional Health Services
Administrator

(If applicable) Defendant is sued in ☐ Individual and ☒ or ☒ Official Capacity.

Address of Defendant: 1220 Washington Ave. Bldg. 9
Albany, NY 12226

Name of Defendant: Sarah B. Van Vorst

(If applicable) Official Position of Defendant: Health Services
Administrator

(If applicable) Defendant is sued in ☐ Individual and ☒ or ☒ Official Capacity.

Address of Defendant: 1220 Washington Ave. Bldg. 9
Albany, NY 12226

Defendant's Information

Name of Defendant: Strykowski

(If applicable) Official Position of Defendant: RN II

(If applicable) Defendant is sued in ☒ Individual and/or ☒

Official Capacity

Address of Defendant: 236 Bob Masia Dr. P.O. Box 2000
Pine City, NY 14871-2000

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Joseph Noeth

(If applicable) Official Position of Defendant: Superintendent of Attica

(If applicable) Defendant is Sued in Individual and/or ☒ Official Capacity

Address of Defendant: Attica Correctional Facility 639 Exchange St.
Attica 14011-0149

Name of Defendant: A. Schunk

(If applicable) Official Position of Defendant: Nurse or Doctor at Attica

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: Attica Correctional Facility 639 Exchange St.
Attica 14011-0149

Name of Defendant: S. Michalek

(If applicable) Official Position of Defendant: Nurse Administrator 1

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: Attica Correctional Facility 639 Exchange St.
Attica 14011-0149

See Attachment Paper for more defendants

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ☐ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) Or about 4-13-15 while housed in Attica,
 defendant (give the name and position held of each defendant involved in this incident) Under the supervision
Of Superintendent Joseph Noeth were medical staff A. Schunk, S.
Michalek, S. Abbasey, Medical Director Dr. Rao saw me or looked over
 did the following to me (briefly state what each defendant named above did): my medical file and refused
to get me the medical treatment that was recommended. Dr. S. Abbasey
Called me down to the facility hospital to take a look at the hemorrhoid and
he tried pushing his hand in my butt with no lube. When I reacted
to the pain and had something to say the officers that was there
Came in the room and try to gang up on me like my painful response
was not called for when they sat there and saw what just took
place. There was no privacy what so ever during this situation.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: The Eighth Amendment right to
adequate medical care and the prohibition of cruel and unusual punishment.

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory damages of
19.9 million dollars for medical neglect, pain and suffering, cruel and
unusual punishment Plus refusing the recommendation (medical malpractice).

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? Granted in part.

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? Denied

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) Or about 2-16-16 while being housed in Five,
 defendant (give the name and position held of each defendant involved in this incident) Points Corr. Fac.
Under the supervision of Superintendent John Colvin. I used the Sick
Call method were nothing was happening so I wrote to Albany were

did the following to me (briefly state what each defendant named above did): I contacted Chief Medical Officer Carl J. Koenigsmann to help with my medical problem but still no one took real time to look into my situation or my medical file because im a inmate.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: The Eighth Amendment right to adequate medical care and the prohibition of Cruel and unusual punishment.

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory damages of 19.9 million dollars for medical neglect, pain and suffering, Cruel and unusual punishment plus the refusing of a hemorrhoids specialist recommendation.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? No one got back to me. at first then I had to do it over but sent a copy to albany.

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? Albany was the only one to respond.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

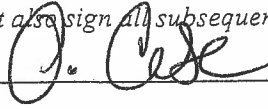
Summarize the relief requested by you in each statement of claim above.

Do you want a jury trial? Yes ☐ No ☒

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/19/2020
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.



Signature(s) of Plaintiff(s)

O. Case 11A5076

C-10-5



**Corrections and
Community Supervision**

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

MEMORANDUM

From: Shelley Mallozzi, Director, Inmate Grievance Program
SUBJ: Receipt of Appeal
Date: 8/11/2020

O CASE 11A5076
Southport Correctional Facility
Your grievance SPT-0150-20 entitled
Hemorrhoid Pain
was rec'd by CORC on 7/14/2020

A disposition will be sent to you after the grievance is reviewed by CORC

0150

To: Grievance unit (Southport) 22 - Hemorrhoid Pain

From: Oliver Case # 11A5076

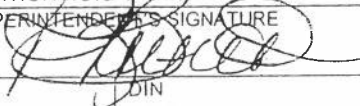
Cell: B-5-6

Date: 5-14-20

I'm writing this grievance because in the past I had hemorrhoid surgery because I was going through a lot of pain when time came for me to use the bathroom. Before the surgery I was told that the hemorrhoid can only come back if I strain while using the bathroom. The surgery took place twice in 2018 and 2019 (one in each year I think) back to back because the first time the surgery was not done right. Now I'm having stomach pains when I use the bathroom and I don't understand why cause there is no hemorrhoids that comes out like before. After looking over my medical files about a week ago I see that in 2015 a outside hospital hemorrhoid doctor recommended that I be taken to the hospital for surgery. Today I spoke to my Southport medical provider and he tells me that this pain on my left side of my stomach may have to do with hemorrhoids and the surgery that I had in the past. This information bothers me because I only had the surgery because I was promised that the pain will go away and I was told that I should no longer have a problem when using the bathroom. Now I'm still having sharp pains after surgery and I'm wondering why cause I have not had a reason to strain since.

Action Requested: I want someone with a medical degree to

ICK ADJA
6-16-20

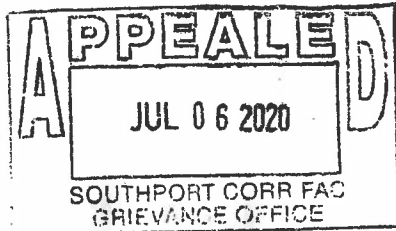
INMATE GRIEVANCE PROGRAM SUPERINTENDENT	GRIEVANCE NO. SPT-0150-20	DATE FILED 05/15/2020
	FACILITY Southport Correctional Facility	POLICY DESIGNATION I
	TITLE OF GRIEVANCE Hemorrhoid Pain	CLASS CODE 22
	SUPERINTENDENT'S SIGNATURE 	DATE 6/17/20
GRIEVANT CASE, O.	IDIN 11A5076	HOUSING UNIT 0-02-12 6-4-15

SUPERINTENDENT'S RESPONSE

The grievant's medical record was reviewed. At this time, it has not been determined that hemorrhoids are the reason for his pain. The grievant declined a rectal exam, which would help diagnose his issue. He is currently being treated for constipation, which can cause pain, straining and recurrence of hemorrhoids.

It appears that the grievant is receiving appropriate medical care. In the future, the grievant is advised to address similar concerns to the Nurse Administrator for the most expeditious means of resolution.

Appeal denied.



SENT

JUN 26 2020

SOUTHPORT GRIEVANCE

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal. * Please state why you are appealing this decision to C.O.R.C.

yes I refuse to have the Nurse Administrator push his finger up my ass. what I want explained to me is why a recommendation was made in 2015 and I was not sent to the hospital until 2018.



GRIEVANT'S SIGNATURE



GRIEVANCE CLERK'S SIGNATURE

6-24-20

DATE

7/6/20

DATE

nd. 12

Case, Oliver

DIN.

11-A-5076

Cell:

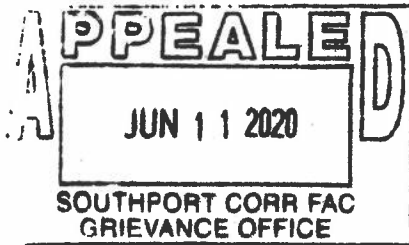
C-02-12

FORM 2131 (Reverse) (Rev. (6/06):

Grievance No.

Response of IGRC:**SPT-0150 -20**

Grievance is Granted In Part: I reviewed the medical record for inmate Case 11a5076. Inmate Case claims that current pain with bowel movements is due to past surgeries for hemorrhoids not working. At this time medical has not determined that hemorrhoids are the current reason for pain. The inmate declined a rectal exam which would help diagnose that issue. We are currently treating inmate Case for constipation which can cause pain and also straining and recurrence of hemorrhoids. I am unable to speak regarding this care that did not take place at Southport Correctional Facility such as any delay in surgery.

**SENT**

JUN 03 2020

SOUTHPORT GRIEVANCE

Date of hearing: 06-03-20

IGRC Members:

SERGEANT

CORRECTIONS OFFICER

CHAIRPERSON

Return within 7 calendar days and check appropriate box.*

- ☒ I disagree with IGRC response and wish to appeal to the Superintendent.
- ☐ I agree with IGRC response and wish to appeal to the Superintendent.

- ☐ I have reviewed deadlocked responses. Pass-Thru to Superintendent.
- ☐ I apply to the IGP. Supervisor for review of dismissal.

Signed: *D. Carter*

Grievant

Date

C. Hall
Grievance Clerk's Receipt

Date

To be completed by Grievance Clerk.Grievance Appealed to the Superintendent: 6-11-20

Date:

Grievance forwarded to the Superintendent for action: 6-11-20

Date:

* An exception to the time limit may be requested under Directive # 4040, section 701.6 (g).

to Grievance unit

from Oliver Case # 11-A-5076

ell B-5-6

date 5-14-20

I'm writing this grievance because in the past I had ~~some~~ hemorrhoid Surgery because I was going through a lot of pain when time came for me to use the bathroom. Before the Surgery I was told that the hemorrhoid can only come back if I strain while using the bathroom. The Surgery took place twice in 2018 because the first time the Surgery was not done right, Now I'm having stomach pains when I use the bathroom and I don't understand why cause there is no hemorrhoid that comes out like before. After looking over my medical files about a week ago I see that in 2015 a outside hospital doctor recommended that I be taken to the hospital for surgery. Today I spoke to my Southport medical provider and he tells me that this pain may have to do with ~~the~~ hemorrhoids and the surgery that I had in the past. This information bothers me because I only had the Surgery to make the pain go away and I was told that I should no longer have a problem when using the bathroom now I'm still having sharp pains and I'm wondering why cause I am not ~~have to~~ strained since.

Oliver Oliver I want someone with a medical degree.

to explain why the department of corrections doctors took two
years to get me to the hospital after the recommendation of a
hemorrhoid Specialist. Also please explain to me why am I still
having pains when the whole point of the surgery was for the pain to
go away.

DISTRICT COURT SCHEDULE OF FEES

Category	Fee
Civil Case Filing (Prisoner & Non-prisoner)	\$400.00
Civil Case Filing (IFP Petitions)	400.00
Document Filing/Indexing; Miscellaneous Civil Filing; Registration of Judgment from another district; Registration of Foreign Judgment; Motion to Quash Grand Jury Subpoena; and Power of Attorney	47.00
Writ of Habeas Corpus	5.00
Notice of Appeal	5.00
Appellate Docketing Fee	500.00
For an appeal to a district judge from a judgment of conviction by a magistrate in a misdemeanor or petty offense case	38.00
Certificate of Search	31.00
Certification of any document; and Transcript of Judgment	11.00
Exemplification of any document (including apostilles)	22.00
Reproduction of each magnetic tape recording	31.00
Retrieval of one box of records from Federal Records Center National Archives	64.00
Each additional box requested	39.00
Electronic record retrieval - Judiciary administrative fee	10.00
FRC Electronic retrieval flat rate fee	9.90
PLUS - FRC per page fee	.65
For any payment which is returned or denied for insufficient funds	53.00
Reproduction per page of any record or paper	.50
Reproduction per page of any electronically accessed record or paper	.10
For each microfiche sheet or film or microfilm jacket copy of any court record	6.00
Admission of Attorneys to Practice District Court Fund (1:93-DF-1)	200.00
Pro Hac Vice	150.00
Duplicate Certificate of Admission or Certificate of Good Standing	19.00

Revised 12/01/2016